

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division



SIR LORD ISMIAL HOLMES, #1489347,

Petitioner,

v.

Civil Action No. 2:18cv189

HAROLD W. CLARKE, Director,
Virginia Department of Corrections,

Respondent.

FINAL ORDER

This matter was initiated by petition for a writ of habeas corpus under 28 U.S.C. § 2254. Petitioner Sir Lord Ismial Homes ("Holmes" or "Petitioner") alleges that his state sentence is being unlawfully executed by the Virginia Department of Corrections. He argues he has not received credit for time served while he was awaiting trial, and he asks the court to award him the credit he claims due.

The petition was referred to a United States Magistrate Judge for report and recommendation pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and (C) and Local Civil Rule 72 of the Rules of the United States District Court for the Eastern District of Virginia. The Magistrate Judge's Report and Recommendation filed October 2, 2018, recommends dismissal of the petition with prejudice as Holmes' claims of sentence calculation errors are time-barred and he has not presented evidence sufficient to

overcome the bar for federal review. The Report and Recommendation advised Petitioner of his right to object and the time limit for doing so. The court has received no objections, and the time for filing objections has now expired.

Accordingly, the court does hereby accept the findings and recommendations set forth in the Report and Recommendation filed October 2, 2018, and it is therefore ORDERED that Respondent's Motion to Dismiss (ECF No. 15) be GRANTED, and that the petition (ECF No. 1) be DENIED and DISMISSED with prejudice.

Petitioner may appeal from the judgment entered pursuant to this Final Order by filing a written notice of appeal with the Clerk of this court, United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510, within thirty (30) days from the date of entry of such judgment.

Petitioner has failed to demonstrate a substantial showing of the denial of a constitutional right, therefore, the Court declines to issue any certificate of appealability pursuant to Rule 22(b) of the Federal Rules of Appellate Procedure. See Miller-El v. Cockrell, 123 S.Ct. 1029, 1039 (2003).

The Clerk is directed to mail a copy of this Final Order to Petitioner and to provide an electronic copy of the Final Order to counsel of record for Respondent.

/s/ 

MARK S. DAVIS
UNITED STATES DISTRICT JUDGE

Norfolk, Virginia
November 2, 2018